DOCUMENT RESUME

ED 328 959 EA 022 651

AUTHOR Decker, Robert H.
TITLE A Negotiations Primer (Central Administration Survival Kit).
PUB DATE Oct 90
NOTE 21p.
PUB TYPE Guides - Non-Classroom Use (055)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Arbitration; Board of Education Role; *Boards of Education; *Collective Bargaining; Elementary Secondary Education; Labor Demands; *Labor Relations; Negotiation Agreements; Negotiation Impasses; Politics of Education; Strikes

ABSTRACT

The role of the school board and strategies for collective bargaining are described in this guide. Section 1 describes the development of a board philosophy, including techniques and imperatives for the collective bargaining table. The second section examines the school board role in negotiations, with a focus on its role in labor relations and discipline at the bargaining table. Appropriate board responses to pressure tactics are discussed in the third section, with an analysis of types of pressure tactics, and responses to strike activity are presented in the fourth section. Section 5 describes the board's operational philosophy, including maintaining academic standards, improving teaching, management, accountability, and creating partnerships. The sixth part discusses development of an operational program, specifically ways to finance an instructional program. Formulating a bargaining team proposal is presented in the final section, including suggestions for the composition of the bargaining team, planning process, and cost. Thirty-one advanced collective bargaining strategies are offered. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED328959

A Negotiations Primer

(Central Administration Survival Kit)

Prepared by

Dr. Robert H. Decker

Department of Educational Administration and Counseling

University of Northern Iowa

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

R. H. Decker

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EA 022 651

TABLE OF CONTENTS

		Pages
I.	Philosophy of the Board (1)	
	a. Philosophy	1 - 2
	b. Bargaining Techniques	2
	c. At the Bargaining Table	2 - 4
II.	The Role of the School Board in Negotiations (2)	
	a. The Board's Role in Labor Relations	6
	b. Discipline at the Bargaining Table	7
III.	Board Response to Pressure Tactics (3)	
	a. Types of Pressure Tactics	9
	b. Tactics	9 - 11
IV.	Strike Activity (4)	11
V.	Operational Philosophy	
	a. Academic Standards	12
	b. Teaching	12
	c. Management	12
	d. Accountability	13
	e. Partnership	13
VI.	Operational Program	
	a. Financing Program of Instruction	13
VII.	Bargaining Team Proposal	
	a. Composition of Team	13
	b. Planning Procedure	14
	c. Cost	14 - 15
VIII.	Advanced Bargaining Strategies	16 - 18

I. PHILOSOPHY OF THE BOARD

a. Philosophy

The Board team must recognize with absolute clarity, the limits within which it is empowered by the Board to negotiate. It is unwise for the negotiating team to be legislating ad hoc firm policies for the Board. The negotiating team should always be certain as to how far in any particular area the Board is willing to go and it should then stay within that parameter. If the area of negotiating movement is not sufficient, it is the team's responsibility to go back to the Board and discuss the matter, argue with it if necessary, and establish new parameters so that negotiations can continue.

Even if the Board limits the authority of its team, the team should never place itself in the position of reaching an agreement at the negotiating table and taking that agreement back to the Board, only to have it rejected. The team very quickly would lose the status it needs to function. The team should know in advance what is going to be acceptable.

But "knowing what is going to be acceptable" comes only after a series of complex questions are posed and answered. For example, what are the cost relationships in providing an education for the children of the district? How does the Board determine the division of money within the budget? Does the Board truly believe that the administration should manage the school, within a framework of policy devised by the Board, or does the Board see itself as the court of appeal for all employees? Does it look upon administration with the collegial concept of years past, or does it regard management as a Board imperative?

Is the Board itself aware of the vagaries of community politics--of the value, or lack of value, placed by all segments of the public upon education?

To what extent does the Board move outside of itself for involvement in

decision making? Does the community exhibit a continuing interest, or is it merely spasmodic?

These are but a few in a potentially lengthy series of conundrums which the team should have resolved with the Board prior to entering negotiations.

b. Bargaining Techniques to be Used

The Board negotiating team has three very broad goals. First, it must not harm the educational process in the act of negotiating an agreement. Individual members should not relieve their own frustrations at the bargaining table in such a manner as to create strife, confusion, or strikes. The team must constantly keep in mind that the primary objective of the school system is the best education possible for the money that is being spent.

Second, the Board team is charged with successfully negotiating a satisfactory agreement, one that is acceptable to both parties. It is rare that any collective bargaining agreement totally pleases any one party. Collective bargaining is merely a series of compromises. Some are palatable: others are unpalatable. Each compromise, however, should be workable within the framework of the particular school system.

Third, the agreement must never lower morale or worsen teacher-administrator relations. Hopefully, it should improve those relations. There is no question that the give-and-take of the negotiating table can create such improvement. There is no question that it can destroy it. The goal of the Board team should be, at the very least, to protect the human status quo.

c. At the Collective Bargaining Table

To achieve these broad goals, the Board negotiating team must respect several specific imperatives. The first major imperative involves the maturity of the team spokesman. He must be articulate and flexible in this thinking, able to

shift gears very easily in discussions, able to reject without infuriating. He must possess a very high tolerance for frustration.

A second specific imperative is a capacity to continually assess the impact of events upon the members of the opposing negotiating team. Is what is being proposed satisfactory to them? Do they truly represent a cross-section? Do they reflect what the general membership feels, or must proposals be geared directly at particular segments of that team? Do they indicate satisfaction or even joy? Somebody on the Board team must be watching in order to know how the other side is reacting.

The third imperative is the accurate keeping of negotiating records. These need not be precise minutes, much less a transcript of every word that is actually said. The proceedings that are most important cover the movement that was made on each particular point that was negotiated, the date that any such movement took place, the date of tentative agreement--and, crucially, any statements uttered by either party, which, in effect, defined the intent of any contract language or lack of language. Very frequently, an arbitration case arises in which it is necessary to go back to the record that was kept of the negotiations in order to argue the intent of particular language.

A fourth imperative is orderly communication. It must be determined who is going to communicate with the media, the Board, and all the members of the management complex. The Board negotiating team cannot operate in a vacuum. It must constantly be aware that the people within its own group are concerned with what is taking place. If it is to keep a unified management front, it must facilitate communication.

The final imperative for the negotiating team is prior determination of strategy and techniques and a willingness to constantly revise positions when

necessary. Very rarely is it possible to sit down at the beginning of a negotiation, determine the best procedure to follow, and find that change is not required as negotiations progress. There are any number of outside and unexpected influences which effect the actual situation while negotiating. The team, and the spokesman in particular, must be sufficiently adaptable in order to constantly meet these changing situations, to answer them and still keep negotiations moving down the path toward the final agreement.

Obviously, this model is predicated upon the concept of the management team in education. This concept requires the participation of those who aid in establishing educational goals and also those in the school district who have the responsibility for seeing that those goals are met. Those who supervise, evaluate, and guide, comprise the management team and should in effect, comprise the negotiating team. In addition, they have the responsibility for administering and carrying out the agreement between the parties.

II. THE ROLE OF THE SCHOOL BOARD IN NEGOTIATIONS

The role of the School Board in negotiations should be prefaced by a few remarks. I would first like to discuss what I call the political factor. What is called collective bargaining in the private sector is not necessarily the same thing in the public sector. School Boards and Superintendents who have been to the bargaining table a few times have learned how difficult it is to represent the public interest and survive professionally. In its subject terms, this means that if unions do not get what they want at the bargaining table, Board members and Superintendents can find themselves in jeopardy. Today's teachers do not talk about their problems out of school, they organize campaigns to unseat Board members and to remove the Superintendent. This leaves School Boards and Superintendents on the horns of this dilemma. How do they protect

the public from the unions without making themselves the sacrificial lamb? Clearly, management survival and representing the public has to be among Board objectives in labor relations. Board members and Superintendents who ignore the political nature of public institutions do so at their own peril.

There are realities to the negotiation process that Board members must be aware of:

1. Collective bargaining has a leveling effect. It's the all for one and one for all concept. Most school managers believe this leveling effect results in mediocrity, and it probably does, as there is bound to be some loss of individuality, creativity, and initiative. In fact, some of this creativity is redirected from the classroom to union activities.
2. The second reality is that individual teacher's needs are replaced by group needs. This surfaces very quickly when we talk about agency shop and seniority clauses in collective bargaining.
3. The third reality is that bargaining statewide tends to equalize differences among districts. From the union's perspective they have the same goals for all school districts.
4. The fourth reality is that bargaining requires sophistication and skill. Negotiation is not something that the Board can enter into with the best interests of the district at heart, but rather the Board must have a complete understanding of what the process is all about. This requires study and preparation.
5. The fifth reality is that the union thrives on emotions. Union strategy is to create issues, not to find solutions.
6. The sixth reality is that negotiations is an adversary role. It

involves a power struggle and the only real power teachers have is the power to go to binding arbitration.

In the private sector, the labor relations process usually pits the haves (management) against the have nots (union) and it is easy for the ordinary citizen to side with labor. In public education, however, for the underdog is not labor, even though teachers are often able to muster more clout than management. If the Board does its homework well, it can reverse this traditional role, and taxpayers can identify with school management.

a. The Board's Role in Labor Relations

--As Policy Setter

1. Develop parameters based on district goals.
2. Select the negotiators.
3. Insist on employee relations goals and objectives in bargaining, in contract management, and in human relations.
4. Understand unionization.

--As Individual Board Members

1. Develop basic understanding of bargaining.
2. Distinguish labor relations from human relations.
3. Don't be co-opted or used by the union to further its goals.
4. Realize that the Board's public position in labor disputes must be unanimous.
5. Protect the confidentiality of the Board's strategy.
6. Don't play mediator with your negotiators and the union.

--At Impasse

1. Understand and expect union organized pressures on you as an individual and as a Board.

2. Establish a unanimous position with one spokesman.

3. Know the legal limitations of individual Board members.

4. Don't stand alone--present a united School Board position and get community support.

b. Discipline at the Bargaining Table

The conduct of the individual members of the negotiating committee during the period when a contract is being negotiated, can have a very substantial impact on its effectiveness in obtaining the best possible contract for management.

Before negotiations begin, the negotiating team agrees that it will present a solid front to the union team. Negotiations should be led by the chief negotiator, who will do all of the talking to the union except for statements by other members of the team which are first cleared by the entire committee. This has the effect of having one single spokesperson for the entire negotiating team, thereby creating the impression upon the union that the management team is solidly behind each of its proposals.

If such a course is not followed and the individual members of the team feel themselves free to argue among themselves in front of the union, publicly disagree with the chief spokesperson, or publicly agree with the union without the consent of the team, the results can be disastrous. In such circumstances, the union will have clear indications as to where the management's weaknesses lie. You can be sure that it will exploit these weaknesses.

The time for dissension and argument is in the caucuses. In such caucuses, each member of the team should feel free to state his or her own position and feelings on all issues. The decisions as to how to proceed with the union should be made upon the basis of such open discussions in caucus. Once a decision is

made, each member should honor the decision and not try to subvert it in front of the union.

If, during negotiations, a member of the team feels that a decision on some matter must be made by the group, he or she should request a caucus by passing a note to the chief negotiator. Normally, the chief negotiator will anticipate such feelings of the committee and call for a caucus before being requested to do so.

Quite often, local boards throughout the country use outside professional negotiators as their chief spokesperson whenever he or she is available. This is done for a number of reasons, foremost of which is the fact that he or she is paid to be a highly skilled expert in negotiating agreements. Because of his or her wide and varied experience in negotiations, such an individual is likely to be well attuned to the point when a caucus needs to be taken, or to the time when he or she needs to press the union or to encourage the union when it is moving in the right direction. Negotiating is, without a doubt, an art and a science. One learns to negotiate by negotiating and by participating in negotiations. Experience counts!

Teamwork counts, too! The negotiating team that exercises discipline at the bargaining table and that has worked to produce solid support for management goals, is an effective bargaining team.

III. BOARD RESPONSE TO PRESSURE TACTICS

Introduction

The Iowa Public Employment Relations Act, the law which allows organization by public employees, states specifically that strikes are illegal. Since strikes do not occur, other forms of illegal activities such as showdowns, refusal to

perform extracurricular duties, and "chalkboard flu" are also included in the bag of tricks commonly referred to as "pressure tactics."

b. Types of Pressure Tactics

Pressure tactics may be divided into three stages: "softening-up" stage, "near-impasse" stage, and the "give-in-or-else" stage.

The "softening-up" stage can begin before the reopening letter is sent to the Board. Some identifying characteristics would be an increase in the number of complaints and grievances; letters or leaflets to the teachers showing their position near the bottom of a wage comparison print-out; or a letter to the Board requesting early opening of negotiation due to the number "of serious issues which need to be addressed during bargaining."

The "near-impasse" stage may develop as early as the first strong position the Board team takes in negotiations and continue until settlement is reached or a strike is seriously contemplated. Examples of tactics applied during this stage may include the filing of an unfair labor practice charge and any of the pressure tactics listed below.

The "give-in-or-else" stage begins with the threat of going to fact-finding arbitration and may include an actual withholding of services.

b. Tactics

Examples of pressure tactics are difficult to categorize since they vary from one district to another. However, they do have one common denominator--psychological and/or political pressure upon the Board and their bargaining team. Such tactics may include:

1. Paid ads in the local newspaper asking for a fair and/or equitable settlement or parity with other districts.

2. News releases accusing the Board's team of stalling, trying to "break the Association," or attacking the integrity or competency of the Board's negotiator. This tactic usually is aimed at placing the blame on the Board for any illegal action taken by the Association.
3. Rumors and half-truths spread among the teachers to cause distrust of the Board and its administrators, or an attempt to drive a wedge between the Board and their team.
4. Phone calls to the Board members in an attempt to circumvent the Board's bargaining team or to remind a few of them of the Association's support.
5. Phone calls to the taxpayers of the community to:
   a. ask their support.
   b. condemn the Board.
   c. attack the Superintendent either through some educational issue or his salary.
   d. prompt their attendance at a Board meeting.
6. Mass attendance at a Board meeting by teachers, their friends, relatives, and interested citizens. They may harass the Board through obnoxious behavior or have questions prepared for certain individuals to ask the Board which they feel will have a favorable impact on their position.
7. Leaflets hand delivered or mailed to citizens which would prompt them to call the Board members and support the teachers. Such leaflets may include the Board members names, addresses, and phone numbers.
8. Filing unfair labor practice charges to cause possible distrust of the bargaining team's behavior, increase support for propaganda aimed at the Board.

This list is not complete but suggests the type of tactics which could be expected to be used.

IV. STRIKE ACTIVITY

The Iowa Public Employment Relations Act defines a strike as "a public employee's refusal, in concerted action with others, to report to duty, or a willful absence from the employee's position, or a stoppage of work by the employee, or the employee's abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment."

Strikes may take on several different forms. The mini-strike can include quick hit-and-run tactics such as a boycott of parent-teacher conferences or a one-day "chalkboard flu" epidemic. Longer term mini-strikes may include refusal to perform extra-curricular duties and failure to perform on committees to which they are assigned.

In cases where the teachers have failed to perform assigned duties, administrators, under some circumstances, can assign those duties to them, such as coaching. A failure to attend parent-teacher conferences can allow administrators to discipline the striking teachers. However, it is suggested, in such instances, that a conference be arranged with [redacted] legal counsel before pursuing discipline procedures.

V. OPERATIONAL PHILOSOPHY

When the Board of Education considers its position--vis-a-vie--the traditional demands of a union, it must look beyond the usual demand of more compensation and how that request can be funded. No--the Board of Education must look at these predictable demands in terms of the impact, if granted, they

will have on the program of studies and educational opportunities for all learners.

The Board of Education shall maintain a commitment as "Advocates for Learners" regardless of age, sex or creed, and shall not reduce extant opportunities for the sole purpose of meeting union compensation demands.

a. Academic Standards

The Board of Education shall maintain academic standards and/or increase standards since they are the conservators of educational opportunities for all learners. Hence, the Board of Education shall maintain a basic skills program for all learners and provide remediation opportunities for all learners as well as maintain reasonable class size in such basic subjects as mathematics, language arts, etc.

b. Teaching

The Board of Education shall provide or guarantee loans so that instructors in areas of teaching, such as foreign language, mathematics, computer science, and science, may be trained or retrained to meet immediate and long range needs of the district.

An effort will be made to raise the average salary of Public School teachers to the highest possible level, given the economic condition surrounding the regional area. At the same time, the Board will attempt to lengthen the school year for certified employees and the school day for students. (A lengthened school day would involve an increase in the diversity of opportunities, not "more of the same.")

c. Management

An incentive program to reward outstanding administrators, require an internship and/or experience for prospective appointments to administrative

positions and require a self-improvement program every two years for every administrator.

d. Accountability

Reward building level staff members for exceptional performance in meeting state and/or local criteria. Require school building staffs and administrators to develop annual improvement programs.

e. Partnerships

Offer parenting classes for those in need. Encourage the founding of an "Adopt-a-School" Program. Create a public education foundation.

VI. OPERATIONAL PROGRAM

a. Financing the Program of Instruction

1. Existing programs of instruction for all learners shall not be reduced for the purpose of higher compensation.
2. Seek to increase salary to higher level as referenced in Part V, section b.
3. The Board of Education shall determine the program of studies and not indulge in "side bar" negotiations with the union concerning educational opportunities for learners.

VII. BARGAINING TEAM PROPOSAL

1. It is proposed that the Board of Education's Bargaining Team consist of the following positions:
   a. Chairmen of the Board's Standing Committees:
      Personnel Committee
      Curriculum Committee
      Finance Committee
   b. A negotiator employed by the Board

c. Retain a few staff members to act as team members who will also be responsible for contract maintenance.

d. Superintendent as ex-officio

2. Planning Procedures

a. Members of the Board of Education will submit their "bargaining goals" to the above outlined Committee for consideration and inclusion in the Board's Bargaining Program. However, for a proposal to be included, there shall be consensus by the Committee to, in fact, include a proposal in the program.

b. There shall be no communication by any Board member with the union except through the Bargaining Committee.

c. The President of the Board of Education shall be the only spokesperson for the Board of Education.

d. The chief negotiator and the staff member(s) will be the only district personnel at "the table."

e. When critical or crucial decisions must be made, the Chief Negotiator will contact the Board Committee and the Superintendent for direction.

f. When and if a decision of major importance must be made, the entire Board will convene, the hour notwithstanding.

3. Cost

A recommendation is that the school district retain or employ a negotiator to work in consultation with the law firm. Before this occurs, the Board should interview those persons that may be interested in accepting employment with the Board of Education.

Example: Since there are three contracts to be negotiated next year, the district is anticipating a heavy load for all concerned. An estimate of cost

for face-to-face activities, preparation, meetings with the Board, etc., to be:

a. Four hundred (400) hours for the Chief Negotiator--range of $45.00 to $80.00 per hour.

b. Management and Planning stipends for staff members involved in the process.

c. Additional expenses--legal counsel, etc. (unknown)

A final observation:

If a Board of Education economizes on the negotiation process, it may have a "cheap" cost but an "expensive contract." If the Board "pays the price: for a competent consultant (negotiator), it probably will have a "cheap" (inexpensive) contract.

ADVANCED COLLECTIVE BARGAINING STRATEGIES

1. Always organize resources.
2. Develop a conscientious negotiating team.
3. Make sure the team has access to pertinent information.
4. You must understand that negotiating is an administrative activity. It is a management function.
5. You must work with school board to determine philosophy and goals.
6. Don't be a waffle - to allow holes to be punched into your strategy and tactics and then to be cut-up and eaten.
7. Board should take a policy role just like any other policy.
8. Give board credit even when they are not deserving. Look for the positive, sometimes you really have to look.
9. Bargaining is being nibbled to death by a duck. You have to be a good Cub fan; you have to learn how to lose.
10. Good planners involve proponents. Also study the grievance history of the district.
11. You must have an ongoing public relation program. Collective bargaining is crisis public relations which is defeating.
12. If there is heat at the table, bargainers take it. Never get into a fight with a pig in the mud, because pigs like it.
13. Never confuse process with product. It's not what you do, it is what you end up with.
14. You must control and be tough on outcome. Bargainers always adjust the process to union tactics.
15. Develop listening skills, and observe body language. You only get yourself into trouble when you talk. Be firm and fair. Listen, don't squawk!
16. Bargainers develop feedback from adversaries and the public.

17. There must be confidentiality on the team and board of education. Unanimity is important (5-0 vote is better than 3-2). Positions must be justifiable. How you are perceived is important.

18. Be objective, impersonal and factual as possible. When media wants story, be careful not to start public issues.

19. Each union and situation is unique. Remember, there is more than one way to skin a cat.

20. Know when to adjust your position or rules you have been playing by. New players create new environments.

21. Bargainers always adjust to situations.

22. Remember to clarify the heck out of the contract.

23. The main goal of a bargainer is a settlement without ego gratification. Beginning bargainers get excited about proponents of the proposal, advanced bargainers do not.

24. When you start believing your own B.S. it is time to quit.

25. Bargainers know that every rose has some thorns.

26. The key to success is timing.

27. Bargaining is a gradual losing process, not giving. The more you meet the more you lose.

28. The best time to start negotiating is the day before it is suppose to end.

29. Don't bargain under pressure.

30. Learn how to say, "NO". If they persist, ask them what part of "NO" don't they understand.

31. A chief negotiator is good if the end product is good and everyone can live with the agreement.

32. It is usually a good idea to bargain for multi-year contracts, however, board's of education are somewhat skeptical about entering into multi-year contracts. It is like having your mother-in-law going over the cliff while driving your new cadillac. You have mixed emotions but you give her the keys anyway.